IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3943 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.THAKER

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SHABBIRBHAI YUSUBBHAI MEMON & 13 - Petitioner(s)
Versus
KARJAN NAGAR PANCHAYAT NOTICE TO BE SERVED THROUGH & 4 - Respondent(s)

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Appearance :
MR NILESH A PANDYA for Petitioner(s) : 1 - 14.
MR JITENDRA M PATEL for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 5.

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CORAM : HONOURABLE MR.JUSTICE K.M.THAKER

Date : 26/12/2007
ORAL JUDGMENT

Pursuant to earlier orders dated 14th December 2007 and 18th December 2007, Mr. JM Patel, advocate appears for respondent Panchayat. He, however, submits that though he has sent written communication to his client he has not received any instruction from his client. He also submits that he has perused the order dated 11.12.2005 passed in Special Civil Application No. 1668 of 1990. The petitioner has requested for a similar order, however as per submission of Mr. Patel he is not in position to make submissions for want of instructions.

2. The petitioners, who are about 14 in numbers, have preferred this common petition against apprehended action of the respondents. The petitioners are cabin-holders near Old S.T. Bus Depot, Nava Pool Bazar, Karjan, District-Baroda and they are doing their business in the small cabins since many years at the said place. It is further stated by the petitioners that they have been regularly paying the fees and rent to the respondent Panchayat and they are ready and willing to pay the fees that may be fixed from time to time by the Panchayat, regularly. They have also stated in the petition that according to their information Resolution was passed for allotting the land, for constructing and running the cabins, to the petitioners. The petitioners, however, have not produced copy of such resolution along with the petition. The petitioners, by making such submissions, in short want to contend that their possession is regular possession and there is no illegality and/or they are not encroachers.

3. It is the say of the petitioners that, they

were orally asked to remove their cabins and that they should not conduct their business activities at the place in question. In short, the petitioners are sought to be removed by oral directions, by the respondent Panchayat. In this background, the petitioners have contended that they cannot be and should not be allowed to be removed without following any procedure of law. In support of the reliefs prayed for in the petition, the petitioners have invoked provisions under Articles 14, 19(1)(g) and 21 of the Constitution of India.

4. The petition was admitted by an order dated 4.9.1993 and ad-interim relief was granted in terms of Para 16(d) of the petition which was to be in operation if the petitioners were not already removed. Mr. Nilesh Pandya, advocate for the petitioners submits that at the relevant time the petitioners were not removed and as of now also they are not removed and they are continuing their activities.

5. Though the petition has been pending since

1993, no affidavit has been filed by the respondents controverting the assertions and submissions made by the petitioners in the petition. In absence of any affidavit controverting the assertions by the petitioners, it is required to be accepted as a fact that the petitioners were allowed to set up cabins and conduct of the activities pursuant to resolution, as claimed by the petitioners in Para 3 of the petition and that the Panchayat was also receiving rent from the petitioners. However, it is a settled legal position that, merely because of such actions on part of the respondent Panchayat, the petitioners would not be entitled in law, as a matter of right to continue to occupy the land which is a public land. At the same time, the petitioners also ought not be removed without following due process of law. In such circumstances, the request made by Mr. Pandya, advocate that the petitioners may not be removed without following procedure in accordance with law appears to be justified and deserves to be granted.

6. Under the circumstances, the petition is disposed of with following directions;

(1) The action for eviction of the petitioners shall be taken in accordance with law and after following prescribed procedure and after giving opportunity of hearing to the petitioners. The petitioners shall not be evicted without following due procedure of law.

(2) Mr. Pandya states that the petitioners are poor persons and the cabins are their source of livelihood and that therefore they may make application/representation in accordance with law and after due procedure to the concerned authority for allotment of land at any other place for the same purpose for which they were holding the cabins and the respondent may consider such representation. If such representation is made then, the authority may consider it strictly in accordance with law and without being influenced by this order.

7. With the aforesaid direction, the petition is disposed of. Interim relief is vacated. Rule is discharged. No order as to costs.

[K.M. Thaker, J.]

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